

CONSERVATION COMMISSION MEETING MINUTES

August 2, 2021 at 6:30 p.m.
Virtual Meeting – 6:30 p.m.

This meeting will be conducted under S.2475, *An act relative to extending certain COVID -19 measures adopted during the state of emergency*, signed on June 16, 2021. The public can view this meeting on Comcast channel 18, the ACTV website or their Facebook page www.facebook.com/AmesburyCommunityTelevision.

To submit a public comment, you can submit a comment on the Facebook Live feed by beginning your comment with PUBLIC COMMENT. Individuals may call in at (786)535-3211
Access Code: 634-513-397

Chairman notes that tonight's Conservation Commission meeting is being recorded by Amesbury Public Access Television; this legal step has been taken, but does not act as the official record. The written meeting minutes by the Recording Secretary is the official record.

Attendance: Michael Jewell, Acting Chairman Steve Thiel, Kathy Pothier, Jim Babbín

Absent:

Also in attendance: Conservation Agent John Lopez, & Recording Secretary Lynn Viselli

Transcription by: Lynn Viselli

Acting Chairman Thiel took attendance for the record:

Michael Jewell	YES
Kathy Pothier	YES
Jim Babbín	YES

ADMINISTRATIVE

Call to Order: 6:34pm

Peer Review Consultant Fees

Governed under MGL ch.40a, sec. 9. Vote to adopt rules on how peer review contracts are processed, fees are handled and where funds are deposited and used by the Town.

A motion was made to adopt the rules as presented by Commissioner Jewell, it was seconded by Commissioner Babbín and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

Acceptance of 94 Acres of Land under Ordinance 2021-077

Ordinance 2021-077 was passed by the City Council. Acting Chairman Thiel raised the funding concerns as discussed with the City Council.

Commissioner Babin asked for something in writing detailing the responsibilities of caring for our properties.

Acting Chairman Thiel stated that individual management plans for each large holding will be forthcoming. Commissioner Babin will work with Agent Lopez on the management plans.

Commissioner Jewell added that funding is needed for the management plans.

Enforcement Order 445-447 Main Street (Tjalsma)

An Enforcement Order was issued 7-6-202 and has been amended 3 times to allow the Applicant additional time to draft a restoration plan. The last amendment was at the 5/3/2021 meeting which implemented a fine of \$400. The activities in the EO included installation of a hot tub and associated fixtures; construction of a patio with pavers on Inland Bank to Merrimack River; placement of stone on Inland Bank to Merrimack River; destruction or removal of plant life within Riverfront Area and Inland Bank to Merrimack River; and alteration of drainage stormwater and flood water. The Applicant has submitted a restoration plan under an NOI for the construction of a hot tub and fixtures, the construction of a patio with pavers and placement of stone on Inland Bank. The \$400 fine was to be paid prior to the June meeting, however has not been received.

Bob Prokop reviewed the history of the filings and approvals for this property. The deck was a gavel patio with pavers and the pavers were replaced with impervious pavers to access the dock. He also reviewed the restoration plans provided to the Commission which included removing some of the pavers, replanting the bank and keeping the hot tub.

Acting Chairman Thiel stated that a fine was imposed at the May meeting in the amount of \$400 which has not been paid.

Enno Tjalsma informed the Commission that he was not aware of the fine and will pay it immediately. Commissioner Pothier stated that the delays in past permitting were due to a property line dispute. She also stated that the hot tub is located within the buffer and should be moved.

Bob Prokop described the location of the hot tub which is over a utility easement for DPW and in the buffer zone.

Agent Lopez added that the majority of this work is within the 25 foot no-disturb zone.

Enno Tjalsma described the condition of the property when he purchased it and expressed his concern for the safety of his family if he is forced to return it to the original conditions.

Acting Chairman Thiel reviewed the regulations regarding the buffer zone.

Agent Lopez also added that the Amended Enforcement Order was mailed to the Applicant containing the fine.

A motion was made to revise the Enforcement Order for 445-447 Main Street to remove the 4 elements removed and the property back to the original condition by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbitt	YES

Agent Lopez added the draft restoration plan to be submitted then the Commission will approve it. Enno Tjalsma asked to continue to October to allow time to do more research.

An amendment to the motion was made to revise the Enforcement Order for 445-447 Main Street to submit a draft restoration plan to remove the 4 elements listed and the property back to the original condition by October 4, 2021 by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

Enforcement Order 72 Elm Street (Aeros Communication)

Enforcement Order issued 4/2/2021 to assess possible violations within Riverfront of the Back River. The activities included excavation of a slope. The EO included dates of certain deliverables. Currently, 3 of the deliverable dates have passed with no submittals received. The EO also stipulated that the property owner was to retain the services of an environmental consultant and a geotechnical engineer to assess impact and structural integrity of the wall and provide a draft restoration plan. The EO has been recorded at the Registry of Deeds. The Applicant has retained an engineer who is drafting a final set of plans. Applicant requests a continuance to September 7, 2021 meeting.

A motion was made to continue September 7, 2021 the Enforcement Order 72 Elm Street by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

Extension Request – OOC 002-1191 473 Main Street (D’Arcy)

Request for a 3 year Extension to an OOC issued in 2018 for the reconstruction of an existing seawall. The extension is requested to allow the applicant more time to monitor the state of the rock wall/sea wall repair and make minor repairs as necessary. The applicant is also evaluating alternative planting as the Bearberry planted were not successful. Once new plantings are determined, some minor scoured land will be repaired per the OOC.

A site visit was done by Commissioner Pothier and the Applicant is adding more rain garden type plantings.

A motion was made to Approve the 3 year Extension to the OOC 473 Main Street was made by Commissioner Babbín, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

Continued Business

NOI 002-1291 137 Kimball Road (Orr)

NOI was filed after the finding of a Positive Determination of Applicability. The project consists of a 656 square foot addition in an area that currently has a 225 square foot deck abutting Meadowbrook Pond. The project is 75 feet from the Inland Bank abutting the pond.

This was continued from the previous hearing for the issuance of a DEP File number. DEP has issued the file number.

Bob Prokop reviewed the proposed project for the Commission with the addition being on a lawned area and erosion controls to be in place.

A motion was made to approve NOI 002-1291 137 Kimball Road by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

A motion was made to close the Public Hearing for NOI 002-1291 137 Kimball Road by Commissioner Jewell, it was seconded by Commissioner Jewell and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

ANRAD 002-1276 91 Macy Street (Yeo)

A wetland delineation which includes BVW and stream. The Applicant proposes the stream is intermittent although evidence suggests it may be perennial. Also, the BVW may be a wet meadow. The delineation was conducted in October, 2020. The stream is part of the Powwow River. A peer review was conducted by BSC Group to review the wetland line and stream. The peer reviewer submitted initial and supplement letters to the applicant, but has received no response from the applicant. The peer review determined the stream to be perennial and the applicant disputes this finding. The information provided by the applicant from 2007 is dated.

Commissioner Jewell stated that BSC has issued letters dated 5/28; 6/15 and 7/20 all of which indicate the stream is perennial based on the expertise and observations.

Agent Lopez informed the Commission that Curt Young had submitted a response to the initial review and asked for a continuance for a response by BSC Group which was received.

Commissioner Babbin asked if it would be a new application if the Applicant filed an amended plan with the stream noted as perennial.

A motion was made to reject ANRAD 002-1276 91 Macy Street based on the delineation being inaccurate pertaining to the stream being perennial as stated in peer review letters from BSC Group dated 5/28; 6/15 and 7/20 making the proposed boundaries inaccurate by Commissioner Pothier, it was seconded by Commissioner Babbin and approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

A motion was made to close the Public Hearing for ANRAD 002-1276 91 Macy Street by Commissioner Babbin, it was seconded by Commissioner Pothier and approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

NOI 002-1279 9, 14, 15 Estes Street (Zahoruiko)

Proposal is for a 14-lot subdivision with three existing dwellings and 13 new single-family homes. Jurisdictional work includes construction within the 100 ft. buffer zone in lot 2 and lot 3, construction of a roadway, drainage and associated utilities. The applicant proposes to extend the existing roadway. Proposed project is divided into three sections (lot 2, lot 3, and roadway improvements). Lot 2 proposed work consists of razing an existing garage, driveway, clear trees, construct a single-family house, deck, walkway, driveway, retaining walls, grading and associated utilities. The proposed site of dwelling is 52 feet from the wetland line. Lot 3 work would consist of clearing and cutting trees for the construction of a single-family house, bulkhead, and retaining wall, drainage, grading and associated utilities. A detention basin is proposed with a flared outlet. Riprap would be used for infiltration. Proposed work on Estes Street consists of widening the street to 20 ft. from its current eight to 11 ft. width. The delineation is valid through September 16, 2022.

DEP Comments: Snow storage areas not found on plans; Snow should not be stockpiled in/over stormwater BMPs; Temporary and permanent erosion control will be required; Extreme diligence is needed with maintenance of temporary BMPs especially on steep slopes and in proximity to wetlands to ensure no sediment leaves the work area; Berms for stormwater BMPs over 6' in height may require a dam license.

The peer review of the wetlands and stormwater was approved. Stormwater review underway to review changed in the proposed plans due to comments from the Planning Board.

Applicant requested a continuance to September 7, 2021 pending a response to peer reviews.

A motion was made to continue to September 7, 2021 NOI 002-1279 9, 14, and 15 Estes Street by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

NOI 002-1275 445-447 Main Street (Tjalsma)

The NOI comes pursuant to enforcement order issued in July 2020 for regulated activities conducted within a jurisdictional area without a valid OOC or Negative Determination of Applicability. Violations included the construction of a patio, construction of concrete pad, installation of hot tub, and placement of stone on riparian bank within 0-20 feet of the top of bank. The enforcement order required the property owner to submit a restoration plan to return the site to previous conditions. The NOI submitted is to approve the unauthorized work. All activities are in violation of the ordinance and regulations including: Section 19.0 (Rivers), Section 21.6 (filling); Section 21.7(structures). Structures are within BLSF with no compensatory storage provided.

There have been 10 years of litigation due to the riparian bank with many geo-engineering studies conducted as part of the permitting of the house. A SOC was issued by DEP. The applicant has submitted a waiver request for work to be done in the buffer zone and Riverfront Area which must be approved unanimously.

Agent Lopez advised the Commission that individual waivers are needed for each activity within the buffer.

Commissioner Pothier asked what mitigation is for the area leading to the dock.

Commissioner Jewell stated that the plan provided is not a restoration plan because the hot tub is remaining, the concrete pad and pavers are still in place and arborvitae are not on the approved planting list. There are a number of activities within the no-build zone without approval or waivers.

Commissioner Babbín stated that based on our local ordinance the Commission cannot approve this project.

Acting Chairman Thiel advised the Commission that one waiver was submitted for all structures, however we require a waiver for each separate structure.

Agent Lopez added that the waivers need to be voted on before the Notice of Intent.

Bob Prokop recommended a site visit to see the restrictions on this property.

Acting Chairman Thiel added that commissioners have been on site previously.

A motion was made to continue to September 7, 2021 NOI 002-1275 445-447 Main Street by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

Agent Lopez suggested an alternatives analysis, waivers and a restoration plan can be filed.

Commissioner Jewell asked if a peer review by BSC Group to determine what could be done would be an option. Agent Lopez stated that a peer review doesn't give direction to a project, it only reviews what is proposed. Discussion followed on different options for the Applicant.

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

NOI 002-1289 113 Whitehall Road (Haberland)

Applicant proposes to enclose the front and sides of the existing home so that it can be backfilled; add a second floor; backfill against the home and taper on the sides to bring the grade up to the elevation of the roadway; install a new driveway with a turnaround; install gutters for drainage; and remove an existing dock and build a new patio with deck. The amount of backfill is a concern as well as potential for discharge of stormwater onto abutting properties. Stantec has been retained to conduct a peer review of the drainage which is ongoing. Continue to September 7, 2021.

A motion was made to continue to September 7, 2021 for NOI 002-1289 113 Whitehall Road by Commissioner Jewell, seconded by Commissioner Babbín and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

NOI 002-1283 54 Lake Attitash Road (Manseau)

The applicant is looking to construction a retaining wall, pervious paver patio and walkways to the rear of the existing house abutting an Inland Bank to Lake Attitash. Additional work contains the removal of 3 trees, replacement of existing wood steps to a dock with granite steps, and cleaning and enhancements along the shore including the removal of invasive species and planting of buffer zone plants and shrubs. The ACC informed the applicant that numerous waivers are required for work within 25 feet to the lake, but no waivers were submitted. The existing dock is not permitted under wetlands laws and the applicant was instructed to revise the plans to include the dock. A site visit was conducted with Commissioner Pothier for review of the excavation of the bank as part of the proposed invasive species removal plan. The applicant has retained the services of an environmental consultant. Numerous changes will be proposed. Continue to September 7, 2021.

A motion was made to continue to September 7, 2021 NOI 002-1283 54 Lake Attitash Road by Commissioner Babbín, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

NOI 002-1245 79 High Street (Desmarais)

Proposed project consists of annual re-nourishing sand on an artificially maintained beach located on Lake Gardner. The proposal will replace the sand that has been washed away into the lake through erosion. The applicant proposes to deposit approximately 30 cubic yards of clean sand annually as needed to the Lake Gardner Beach. Added material would be done in accordance with the proposed 2019 Lake Gardner Beach Nourishment Plan and sediment grain size will match what currently exists. The applicant has amended the proposed plan based on comments from the June hearing. The plan will

also include the repaving of the existing parking lot, new curbing, stormwater improvements to drainage and the addition of an emergency access ramp to the water.
Continue to September 7, 2021.

A motion was made to continue to September 7, 2021 NOI 002-1245 79 High Street by Commissioner Jewell, it was seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

New Business:

RCOC 002-0853 4 Birchmeadow Road (James)

Request for a COC for an OOC issued 3/22/2004 for the construction of a second floor addition, installation of a driveway, stormwater structures and retaining wall in the Buffer Zone to Lake Attitash. As-built plans have been submitted and work is done in compliance with the OOC issued.

Steve Haight, representing the Applicant, presented that the work was done in accordance with the Order of Conditions.

A motion was made to approve for RCOC 002-0853 4 Birchmeadow Road by Commissioner Jewell, seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

RCOC 002-1251 94 Fern Avenue (Amato)

Request for a COC for an OOC issued 1/10/2020 for the installation of a sewer connection on the property to a low pressure sewer main and the abandonment of the existing septic system. The location of the pump and sewer cleanout shifted during construction further away from the resource area; the driveway was repaved when the septic system was abandoned as approved under a separate RDA, however it was expanded to include a small gravel area along the roadway. There was no cumulative impact to the resource areas.

Commissioner Babbín conducted a site visit and the gravel driveway has minimal impact on the resource area.

A motion was made to approve for RCOC 002-1251 94 Fern Avenue by Commissioner Babbín, seconded by Commissioner Pothier and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

NOI 002- 80 Fern Avenue (Lynch)

This application is the result of a request for a COC. The As-built plan filed with the COC request showed a rear deck constructed without a valid OOC 50 feet from the edge of BVW. The deck was constructed by the previous owner without approval. This application is for the deck as it was constructed. This was done to bring the property into compliance.

Hearing was not opened. Continued to September 7, 2021 for DEP#.

A motion was made to continue to September 7, 2021 for NOI 002- 80 Fern Avenue by Commissioner Jewell, seconded by Commissioner Babbín and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

RDA ACC 002-110 110 Haverhill Road (Boston North Technology Park, LLC)

Application proposes to repave an existing parking lot within the existing footprint. There will be no increase in impervious area. Installation of dark-sky compliant pole-mounted light fixtures within and along the edge of the parking lot. A sign measuring 2'x3' to be installed reading ACC 001-110 visible from a public way during work.

Chris York informed the Commission that the project consists of repaving an existing paved area with no proposed expansion and installation of dark-sky compliant pole-mounted light fixtures partially within the parking lot or edge of roadway.

A motion was made to approve a Negative Determination of Applicability for RDA ACC 002-110 110 Haverhill Road by Commissioner Babbín, seconded by Commissioner Jewell and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbín	YES

A motion was made to close the public hearing for RDA ACC 002-110 110 Haverhill Road by Commissioner Pothier, seconded by Commissioner Jewell and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

Minutes

Approval of Minutes for Meetings on June 21, 2021 and July 6, 2021

A motion was made to approve the Minutes from June 21, 2021 and July 6, 2021 by Commissioner Pothier, seconded by Commissioner Babbin and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

The Meeting was adjourned at 8:46pm by Motion of Chairman Jewell, seconded by Commissioner Babbin and unanimously approved by Rollcall Vote:

The Acting Chairman called the Rollcall Vote:

Michael Jewell	YES
Steve Thiel	YES
Kathy Pothier	YES
Jim Babbin	YES

Per the Massachusetts Open Meeting Law, the list of documents that were either distributed to the Amesbury Conservation Commission before the meeting in the packet or at the meeting.

- 1. Agenda**
- 2. Agenda Guide**